



ANNUAL REPORT

2011

MISSION STATEMENT

To preserve public confidence in our City government through education, advice, and the prompt and fair enforcement of local governmental ethics laws.

DUTIES AND RESPONSIBILITIES

The City of San Diego Ethics Commission is responsible for monitoring, administering, and enforcing the City's governmental ethics laws; conducting audits and investigations; providing formal and informal advice to persons who fall within the jurisdiction of the Commission; conducting training sessions for the regulated community; and proposing governmental ethics law reforms.

Governmental ethics laws include the Ethics Ordinance, the Election Campaign Control Ordinance, and the Municipal Lobbying Ordinance. The Ethics Commission accepts complaints regarding alleged violations of laws within its jurisdiction, and protects individuals from retaliation for reporting violations. The Ethics Commission may impose fines up to \$5,000 for each violation of local governmental ethics laws.

Persons who fall within the jurisdiction of the Ethics Commission include the following:

- Mayor, Councilmembers, City Attorney, and their respective staffs
- Unclassified managerial employees, including employees of City agencies who file Statements of Economic Interests
- City candidates, political committees, and campaign treasurers
- Members of boards & commissions who file Statements of Economic Interests
- Members of Project Area Committees
- Consultants who file Statements of Economic Interests
- Lobbyists

The Ethics Commission is an independent City department that does not report to the Mayor or City Council. Instead, Commission staff reports directly to the Ethics Commissioners, who are appointed by the Mayor and City Council to serve four-year terms.

2011 COMMISSIONERS AND STAFF

Chair

Clyde Fuller (elected June 9, 2011)

Vice Chair

William Howatt, Jr. (elected June 9, 2011)

Commissioners

W. Lee Biddle

Deborah Cochran (assumed office October 18, 2011)

Faye Detsky-Weil

Clyde Fuller

William Howatt, Jr.

John O'Neill

Larry Westfall (left office October 18, 2011)

Graydon "Bud" Wetzler

Staff

Stacey Fulhorst, Executive Director

Stephen Ross, Education Program Manager

Lauri Davis, Senior Investigator

Rosalba Gomez, Auditor

EDUCATION AND OUTREACH

The Commission continued to make education and outreach top priorities during 2011. Specifically, the Commission made the following efforts to educate City Officials regarding the various provisions of the City's Ethics Ordinance:

- The Commission staff conducted live training sessions on the Ethics Ordinance for the offices of Council Districts 1, 2, 3, and 5, as well as the City Attorney's Office.
- The Commission staff conducted four live training sessions on the Ethics Ordinance for unclassified management employees of the City in January, April, July, and October.
- In April, the Commission staff conducted a live training for the members of the Board of Directors and staff of the Southeastern Economic Development Corporation that was customized to address this agency's jurisdiction.
- In October, the Commission staff conducted a live training for the Historical Resources Board with emphasis given to the unique issues encountered by this agency.
- In November, the Commission staff conducted a live training for the Salary Setting Commission concerning the disclosure of economic interests.
- Approximately 420 City Officials (primarily volunteer members of City boards and commissions) obtained training on the City's Ethics Ordinance via the Commission's on-line application.
- The Commission staff responded to approximately 270 requests for informal advice from City Officials regarding compliance with the City's Ethics Ordinance.
- The Commission staff participated extensively in the overhaul of gift regulations by the Fair Political Practices Commission from August through December.
- The staff monitored changes to state ethics laws that impacted corresponding local laws, and notified City Officials about these changes.

- The staff prepared and distributed one formal advice letter concerning provisions in the Ethics Ordinance.

In addition, the Commission undertook the following efforts to educate City candidates and their staffs, as well as political committees, on the City's campaign laws:

- The Commission staff conducted two training sessions for City candidates and their staffs on the City's campaign laws in July and October. These training sessions were designed to provide all candidates (including grass roots candidates without professional campaign consultants) with basic information on the City's campaign laws in clear and simple terminology.
- The staff responded to approximately 150 requests for informal assistance from City candidates and their staffs, as well as various political committees participating in City elections.
- The Commission staff issued an updated Candidate Manual for 2012.
- The Commission prepared and issued its first Committee Manual that provides extensive guidance for committees that make expenditures to influence local candidate and ballot measure elections.
- The Commission staff updated two previously-issued Fact Sheets concerning various provisions of the City's campaign laws.
- The Commission staff issued a new Fact Sheet regarding the electronic filing of campaign statements.

During 2011, the Commission made the following efforts to educate lobbying firms and organizations on the City's lobbying laws:

- The Commission staff responded to more than 140 requests for informal advice and assistance concerning the City's lobbying laws.
- The staff prepared and distributed one formal advice letter concerning provisions in the Lobbying Ordinance.

Finally, the Commission's education and outreach efforts during 2011 included the following:

- The Commission continued to disseminate information to the public, the regulated community, City Officials, and the media, via three "interested persons" e-mail lists: one for campaign finance issues, one for ethics issues, and one for lobbying issues.
- The Commission frequently updated its website (www.sandiego.gov/ethics) to provide the public with timely information regarding Commission meetings, legislative proposals, educational efforts, and enforcement activities.
- The Executive Director spoke to the California Political Treasurers Association at its annual meeting and successfully encouraged political treasurers outside San Diego to work with local candidates and committees.
- The Executive Director made presentations to groups inside and outside the City concerning the role of the Ethics Commission and the laws within its jurisdiction.

ADMINISTRATIVE ACTIVITIES

During the 2011 budget season, the Commission made a presentation to the City Council regarding the Commission's accomplishments within its existing budget, as well as the service impacts associated with prior budget cuts and the loss of two staff positions. The Commission advised the City Council that its remaining staffing levels are essential to the provision of core services (education, investigations, and auditing). In accordance with the Commission's request, the City Council did not impose any additional budget reductions for the fiscal year commencing on July 1, 2011 (with the exception of approximately \$3,000 in reductions to contracts and supplies proposed by the Mayor).

The City Council also approved the Ethics Commission's request to re-allocate personnel funding for a full-time General Counsel to non-personnel professional services in order to pay for a part-time General Counsel as well as hearing-related costs, including administrative law judges, attorneys, and court reporters. During 2011, the Commission's Executive Director and Education Program Manager were able to effectively absorb the remaining duties previously performed by a full-time General Counsel. Although the Commission plans to request a similar re-allocation of resources for fiscal year 2013, it is possible that the workload associated with the 2012 election cycle will necessitate a request for additional funding.

During 2011, the City's Personnel Department studied the Executive Secretary Position at the Ethics Commission and determined that it should be re-classified to an Administrative Aide II position. This determination was based on the additional duties and responsibilities assumed by this position since it was initially classified in 2001.

LEGISLATIVE PROPOSALS

As a result of the extensive amount of volunteer Commissioner time involved in two administrative hearings during 2010, as well as the fact that other jurisdictions in California routinely use administrative law judges employed by the California Office of Administrative Hearings for their respective hearings, the Commission recognized the need to amend the Municipal Code to provide for the optional use of administrative law judges to preside over Ethics Commission hearings. In February of 2011, the Rules Committee approved relevant straightforward changes to the Municipal Code, and in April of 2011 the full City Council adopted the associated Ordinance.

In addition, during 2011, the Ethics Commission consulted with the City Attorney's Office concerning proposed changes to Council Policy 000-13 intended to clarify that service of less than one-half of one term does not count toward the two-term limit for the City's board and commission members. The Commission's proposals were incorporated into a larger group of changes that were approved by the Rules Committee on October 26, 2011, and will be submitted to the full City Council in early 2012.

AUDIT PROGRAM

During 2011, the Ethics Commission's Auditor completed the audits of the remaining committees selected at the 2009 audit drawing from the 2008 election cycle:

Gentry for City Attorney

Friends of Bob Ilko

Brian Maienschein for City Attorney

Friends of David Tos

Safe Beaches San Diego Yes on D (November 2008 election)

Save Mission Bay – Yes on C (November 2008 election)

Yes on Propositions A, B & C Committee¹ (June 2008 election)

On September 23, 2011, the Ethics Commission conducted a random drawing of committees from the 2010 election cycle and selected the following candidate committees for audit:

FINANCIAL ACTIVITY BETWEEN \$10,000 AND \$49,000:

Brian “Barry” Pollard for City Council

Kim Tran for City Council 2010

FINANCIAL ACTIVITY BETWEEN \$50,000 AND \$99,999:

Steve Hadley for City Council 2010

FINANCIAL ACTIVITY OF \$100,000 OR MORE:

David Alvarez for Council 2010

Faulconer for Council 2010

Felipe Hueso for City Council 2010

Protect Neighborhood Services Now, sponsored by SDMEA, supporting

Faulconer, Young, Alvarez, Wayne for City Council 2010

Howard Wayne for Council 2010

Lorie Zapf for City Council 2010

¹ This audit was completed during 2011 and will be submitted to the Ethics Commission on January 12, 2012.

In addition, the following ballot measure committees were chosen at the random drawing:

FINANCIAL ACTIVITY BETWEEN \$10,000 AND \$49,999:

Working Family Issues to support Prop D (November 2010 election)

FINANCIAL ACTIVITY BETWEEN \$50,000 AND \$99,999:

Coalition for Fair Employment in Construction (did not qualify for ballot)

FINANCIAL ACTIVITY OF \$100,000 OR MORE:

Protect Fire and Police Services, Yes on Prop D (November 2010 election)

San Diegans for Accountability at City Hall, Yes on D (June 2010 election)

San Diegans for Fair and Open City Contracting supported by the construction industry (did not qualify for ballot)

During the last quarter of 2011, the Commission's Auditor completed the following audits from the 2010 election cycle:

Faulconer for Council 2010

Lorie Zapf for City Council 2010

ENFORCEMENT – STATISTICS

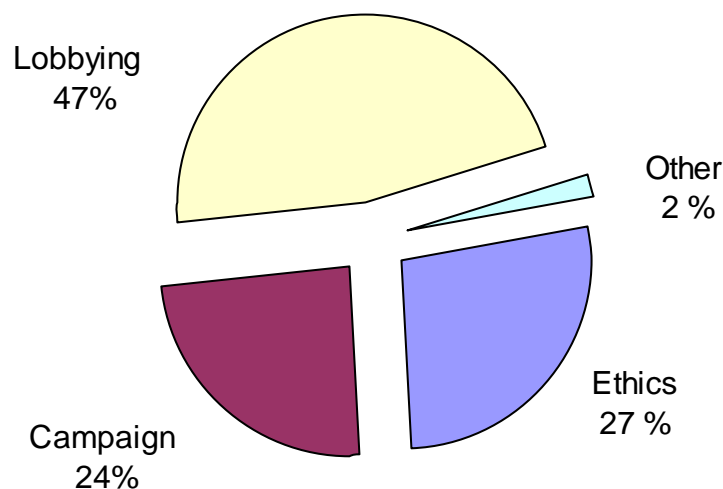
Number of Complaints

During 2011, the Ethics Commission processed a total of 81 complaints. These complaints were submitted by way of written complaint forms, letters, memos, and e-mails. They were presented by third parties and other governmental agencies, as well as Ethics Commissioners and Commission staff. None of the complainants were anonymous.

Types of Complaints

Complaints processed by the Ethics Commission in 2011 concern alleged violations of law as follows:

- 38 complaints alleged a violation of the Lobbying Ordinance;
- 22 complaints alleged a violation of the Ethics Ordinance;
- 19 complaints alleged a violation of the Election Campaign Control Ordinance; and
- 2 complaints alleged a violation outside of the Commission's jurisdiction.

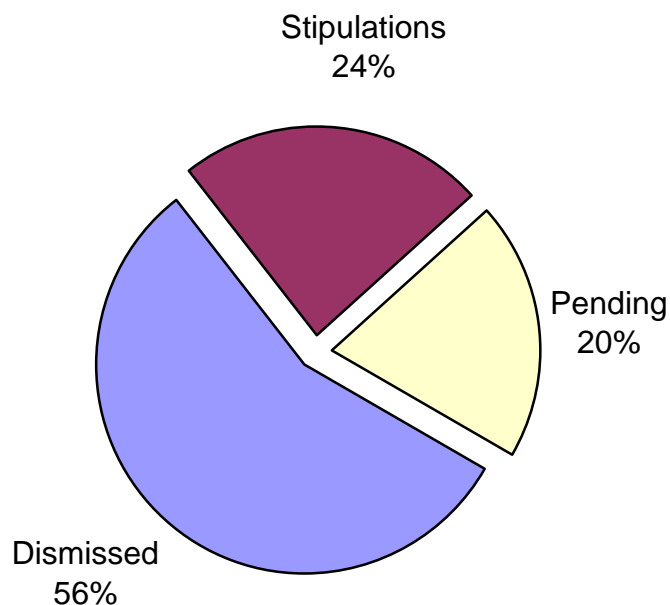


Investigations

Out of the 81 complaints processed by the Commission during 2011, 44 were approved for formal investigations. In 21 cases involving lobbyists who failed to timely amend their registration forms in order to add information regarding new clients or new municipal decisions that were identified on their respective quarterly reports (but not their initial registration forms) the Commission opted for an educational approach in lieu of proceeding with investigations.

The 44 cases approved for investigation in 2011, together with 27 cases approved for investigation but not resolved in previous years, resulted in the following disposition during 2011:

- 40 matters were ultimately dismissed by the Commission after considering the results of staff investigations;
- 17 matters resulted in stipulated settlement agreements;
- 14 investigations are currently pending.



ENFORCEMENT – STIPULATIONS

During 2011, the Commission entered into seventeen stipulated settlements in connection with violations of the City's campaign laws, lobbying laws, and ethics laws. Seven of these stipulations concerned violations of the City's campaign laws:

- The Working San Diegans PAC, Supporting Howard Wayne 2010, With Major Funding from AFSCME agreed to pay a fine in the amount of \$10,000 for failing to disclose that it was sponsored by AFSME on two campaign disclosure statements and 36,000 campaign mailers and flyers distributed in support of a City candidate.
- The Yes on Propositions A, B & C Committee and its treasurer William Baber agreed to pay a \$10,000 fine for failing to timely and accurately report a \$25,000 contribution from the Sycuan Band of the Kumeyaay Nation as well as the failure to identify Sycuan as a major donor of \$50,000 or more on a campaign advertisement.
- The International Brotherhood of Electrical Workers Local 569 Committee on Political Education and its treasurer Kinde Durkee agreed to pay a fine in the amount of \$3,000 as a result of their failure to timely file campaign statements disclosing independent expenditures made to support a City candidate.
- San Diegans for Healthy Neighborhoods and a Strong Economy to Support Felipe Hueso for City Council – 2010 Sponsored by San Diego-Imperial Counties Labor Council AFL-CIO and its treasurer Xavier Martinez agreed to pay a \$3,000 fine in connection with their failure to identify the Labor Council as the committee's sponsor on a campaign statement, and their failure to include the requisite "paid for by" disclosure on two recorded telephone calls made to support a City candidate.
- San Diego Works! Sponsored by San Diego-Imperial Counties Labor Council AFL-CIO and its treasurer Xavier Martinez agreed to pay a \$2,000 fine for failing to timely and accurately disclose independent expenditures made to oppose a City candidate.

- Robert Ilko, a candidate for City Council District 5, agreed to pay a \$2,000 fine as a result of his failure to disclose contributions and expenditures, as well as his failure to maintain campaign-related records.
- Unite Here San Diego: A Sponsored Committee of Unite Here International and Unite Here Local 30 agreed to pay a \$500 fine for failing to timely disclose all of the independent expenditures it made to support a City candidate.

In addition, eight of the stipulations approved by the Commission during the past year involved the City's lobbying laws and the failure to timely file quarterly disclosure reports. The following lobbying firms and organization lobbyists paid fines ranging from \$100 to \$1,000 per violation:

- Business Improvement District Council
- Gerding Edlen Development
- Latitude 33 Planning & Engineering
- Law Offices of Julie Hamilton
- M. W. Steele Group
- Ronald L. Buckley Consulting
- San Diego Association of Realtors
- Unite Here Local 30

Finally, two of the stipulations approved by the Commission during 2011 concerned provisions in the City's Ethics Ordinance:

- Councilmember Marti Emerald paid a fine in the amount of \$500 in connection with the use of City resources for the preparation and dissemination of a News Release that included information regarding campaign-related activities.
- Larry Baza, a member of the Commission for Arts & Culture, paid a \$200 fine in connection with the late filing of a Statement of Economic Interests.

During 2011, the Commission levied a total of \$35,000 in administrative fines by way of the stipulations discussed above. The stipulated settlements resolve all factual and legal issues without the necessity of holding an administrative hearing. All fines are paid to the City of San Diego's General Fund and are not credited to the Ethics Commission's operating budget.

LITIGATION

Thalheimer, et al. v. City of San Diego

On December 21, 2009, the following Plaintiffs filed suit with the United States District Court (Case No. 09-CV-2862 IEG) to temporarily enjoin the City from enforcing various provisions of its campaign laws:

- 1) Phil Thalheimer
- 2) Associated Builders & Contractors, Inc. San Diego Chapter
- 3) Lincoln Club of San Diego County
- 4) Republican Party of San Diego
- 5) John Nienstadt, Jr.

Specifically, the Plaintiffs challenged the following laws:

- ✓ the \$500 contribution limit to City candidates;
- ✓ the ban on contributions from organizations to City candidates
- ✓ the application of the source and amount limits to contributions made to groups that solely engage in independent expenditure activity; and
- ✓ the 12-month pre-election fundraising time limit.

The City retained outside counsel to defend the litigation and, during the course of 2010 and 2011, Ethics Commission staff worked extensively with the City's attorneys to provide relevant information and assist with the defense of the lawsuit.

On February 16, 2010, the Court issued an order upholding the City's \$500 contribution limit but granting the Plaintiffs' request for a preliminary injunction with respect to the application of the \$500 contribution limit and the ban on contributions from organizations to groups that make independent expenditures to support or oppose City candidates. In addition, the court upheld the City's general ban on contributions from organizations to City candidates, but ruled that political parties may not be subjected to this ban and directed the City to adopt an appropriate limit. (The City Council subsequently approved a \$1,000 contribution limit for political parties.) Finally, the Court upheld the City's 12-month pre-

election fundraising time limit, but ruled that it does not apply to a candidate's personal funds.

Both parties appealed the District Court ruling to the Ninth Circuit Court of Appeals. On June 9, 2011, the Ninth Circuit issued an Opinion affirming all of the lower court's decisions concerning the preliminary injunction. In December of 2011, the parties filed cross motions for summary judgment with the District Court. Oral arguments are scheduled to take place in January of 2012.